

ARTICLE X

VISITS TO ESTABLISHMENTS

10.1 Each Party shall permit visits to its government establishments, facilities, agencies, laboratories, and Contractor industrial facilities by employees of the other Party or by employees of the other Party's Contractor(s) provided that the visit is authorized by the respective Party and the employees have appropriate security clearances and a need-to-know.

10.2 All visiting personnel shall be required to comply with security regulations of the hosting Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

10.3 Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform with the established visit procedures of the host Party. Requests for visits shall bear the name of the Project.

10. Lists of personnel of each Party required to visit, on a continuing basis, facilities of the other Party shall be submitted through official channels in accordance with recurring international visit procedures.

ARTICLE XI

SECURITY

11.1. All Classified Information or material provided or generated pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded in accordance with the General Security Agreement between the Federal Republic of Germany and the United States of America, dated 23 December 1960, as amended, and including the Industrial Security Annex thereto, dated 16 April 1970, as amended.

11.2. Classified Information and material shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such information and material shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

11.3. Each Party shall take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this Agreement is protected from further disclosure, except as permitted by paragraph 11.9, unless the other Party consents to such disclosure. Accordingly, each Party shall ensure that:

11.3.1. The recipient shall not release the Classified Information to any government, national organization, or other entity of a Third Party without the prior written consent of the respective Party in accordance with the procedures detailed in Section XII (Third Party Sales and Transfers);

11.3.2. The recipient shall not use the Classified Information for other than the purposes provided for in this Agreement; and

11.3.3. The recipient shall comply with any distribution and access restrictions on information that is provided under the Agreement.

11.4. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this Agreement has been lost or disclosed to unauthorized persons. Each Party also shall promptly and fully inform the other Parties of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

11.5. The PM shall prepare a Project Security Instruction and a Classification Guide for the Project. The Project Security Instruction and the Classification Guide shall describe the methods by which Project Information shall be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide shall be developed by the PM within three months after this Agreement enters into force. They shall be re-

viewed and forwarded to the Parties' DSAs for approval and shall be applicable to all government and Contractor personnel participating in the Project. The Classification Guide shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide shall be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6. The DSA of the Party which awards a classified contract shall assume responsibility for administering within its territory security measures for the protection of the classified information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractors of any classified information received under this Agreement, the DSAs shall:

11.6.1. Ensure that such Contractor, prospective Contractor or sub-contractors and their facility(ies) have the capacity to protect the information adequately;

11.6.2. Grant a security clearance to the facility(ies), if appropriate;

11.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate;

11.6.4. Ensure that all persons having access to the information are informed of their responsibilities to protect the information in accordance with national security laws and regulations, and provisions of this Agreement;

11.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected; and

11.6.6. Ensure that the Classified Information is limited to those persons who have a need-to-know for purposes of the Agreement.

11.7. Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this Agreement only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party shall not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Party shall be consulted for approval prior to permitting such access.

11.8. For any facility wherein Classified Information or material is to be used, the responsible Party or Contractor shall approve the

appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this Agreement. These officials shall be responsible for limiting access to Classified Information or material involved in this Agreement to those persons who have been properly approved for access and have a need-to-know.

11.9. Each Party shall ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in the Project.

11.10. Information or material provided or generated pursuant to this Agreement may be classified as high as Confidential. The existence of this Agreement is Unclassified and the contents are Unclassified.

ARTICLE XII

THIRD PARTY SALES AND TRANSFERS

12.1. The Parties shall not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project Foreground Information to any Third Party without the prior written consent of the other Party. Furthermore, neither Party shall permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Party. Such consent shall not be given unless the government of the intended recipient consents in writing with the Parties that it shall:

12.1.1. Not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.1.2. Use, or permit the use of, the equipment or information provided only for the purposes specified by the Parties.

12.2. A Party shall not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by the other Party to any Third Party without the prior written consent of the Party which provided such equipment or information. The providing Party shall be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

ARTICLE XIII

LIABILITY AND CLAIMS

13.1. For liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution and for the benefit of the Project, the following provisions shall apply.

13.2. With the exception of claims for loss of or damage to Project Equipment under Article VII (Project Equipment), each Party waives all claims against the other Party for injury to or death of its military or civilian personnel and for damage to or loss of its property (including jointly acquired property) caused by such personnel (which do not include Project Contractors) of that other Party. If, however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Party's personnel, the cost of any liability shall be borne by that Party alone.

13.3. Claims, other than contractual claims, not covered by paragraphs 13.1. and 13.2. (such as those relating to unauthorized use of intellectual property) shall be dealt with by each Party in accordance with its national laws and applicable international agreements between the Parties.

13.4. In the case of damage caused to or by jointly acquired property of the Parties, where the cost of making good such damage is not recoverable from other persons, such cost shall be borne by the Parties equally.

13.5. Claims arising under any Contract awarded pursuant to Article VI (Contracting Provisions) shall be resolved in accordance with the provisions of the Contract. The Parties shall not indemnify Contractors against liability claims by any other persons. However, in exceptional circumstances (e.g., involving certain nuclear activity or other unduly hazardous activity where the cost of insurance is excessively high), the Parties may consider whether to indemnify Contractors against liability claims by any other persons.

ARTICLE XIV

PARTICIPATION OF ADDITIONAL PARTIES

- 14.1. It is recognized that other Parties may wish to join the Project.
- 14.2. Mutual consent of both Parties shall be required to conduct discussions with potential additional Parties. The Parties shall discuss the arrangements under which another Party might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure shall be in accordance with Article VIII (Disclosure and Use of Information), Article IX (Controlled Unclassified Information), Article XI (Security) and Article XII (Third Party Sales and Transfers).
- 14.3. The Parties shall jointly formulate the provisions under which an additional Party might join. The addition of new Parties to the Project shall require amendment of this Agreement by the Parties.

ARTICLE XV

CUSTOMS DUTIES, TAXES AND SIMILAR CHARGES

15.1. Insofar as existing national laws and regulations permit, the Parties shall endeavor to ensure that readily identifiable taxes, customs duties, and similar charges or quantitative/qualitative restrictions on imports and exports are not imposed in connection with work carried out under this Agreement.

15.2. The Parties shall endeavor to ensure that such readily identifiable taxes, customs duties, and similar charges from which relief is available do not enter into the price of information or materials produced under this Project. Each Party shall use its best efforts to ensure that customs duties, taxes, and any similar charges are administered in a manner most favorable to the efficient and economical conduct of the work described in this Agreement.

15.3. If any taxes, customs duties, or similar charges are levied, they shall be borne by the Party of the country in which they are levied as a cost to that Party over and above the Party's shared costs of the project.

15.3. If, in order to apply European Union (EU) regulations, it is necessary to levy duties, then these shall be met by the EU member end recipient. To this end, parts or components of equipment coming from outside the EU shall proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place.

ARTICLE XVI

SETTLEMENT OF DISPUTES

16.1. Disputes between the Parties arising under or relating to this Agreement shall be resolved only by consultation between the Parties and shall not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

ARTICLE XVII

LANGUAGE

17.1. . The working language for the Project shall be English language.

17.2. All data and information generated under this Agreement and its implementing Contracts, and provided by one Party to the other, shall be furnished in the English language.

ARTICLE XVIII

AMENDMENT, TERMINATION, ENTRY INTO FORCE, AND DURATION

18.1. Except as otherwise provided, this Agreement may be amended by the mutual written consent of the Parties.

18.2. This Agreement may be terminated at any time upon the written consent of the Parties. In the event both Parties consent to terminate this Agreement, the Parties shall consult prior to the date of termination to ensure termination on the most economical and equitable terms.

18.3. Either Party may terminate this Agreement upon 90 days written notification of its intent to terminate to the other Party. Such notice shall be the subject of immediate consultation by the SPMG to decide upon the appropriate course of action to conclude the activities under this Agreement. In the event of such termination, the following rules apply:

18.3.1. The terminating Party shall continue participation, financial or otherwise, up to the effective date of termination;

18.3.2. Each Party shall be responsible for its own Project related costs associated with termination of the Project;

18.3.3. All Project Information and rights therein received under the provisions of this Agreement prior to the termination shall be retained by the Parties, subject to the provisions of this Agreement; and

18.3.4. The total contribution by any terminating Party including termination costs shall not exceed the amount the terminating Party would have contributed if it had remained in the Project.

18.4. The respective rights and obligations of the Parties regarding Article VII (Project Equipment), Article VIII (Disclosure and Use of Project Information), Article IX (Controlled Unclassified Information), Article XI (Security), Article XII (Third Party Sales and Transfers), and Article XIII (Liability and Claims), and this Article XVIII (Amendment, Termination, Entry into Force, and Duration) shall continue to apply notwithstanding termination or expiration of this Agreement.

18.5. This Agreement, which consists of eighteen (18) Articles, shall enter into force upon the date of last signature and shall remain in force for 5 years. It may be extended by written amendment of the Parties.

The undersigned, being duly authorized by their governments, have signed this Agreement.

DONE in duplicate, in the English language.

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF
AMERICA

Signature

CRAIG D. HUNTER

Name
DEPUTY ASSISTANT SECRETARY OF THE ARMY
FOR DEFENSE EXPORTS AND COOPERATION

Title

SEPTEMBER 24, 2002

Date
1777 North Kent Street, Suite 8200
Rosslyn, VA 22209 USA

Location

FOR THE FEDERAL MINISTRY OF
DEFENCE OF THE FEDERAL
REPUBLIC OF GERMANY

Signature

Name

Dr. K. Schloenbach
Präsident IT-Amt Bw
Title

Date

25.11.2002
56073 Koblenz
Location